

REMARKS

In the above-referenced response, claims 1-7 were provisionally rejected under 35 USC 101. Applicant respectfully traverses and will address the merits of such a rejection upon an indication of allowable subject matter.

The pending claims were rejected under 35 USC 103(a) either over Snell alone or Snell in combination with DiRienzo. Applicant respectfully traverses.

With respect to claim 1, the Examiner acknowledges that Snell fails to teach monitoring data packages to determine revenue. The Examiner further cites DiRienzo as teaching this feature; however, this is not factually correct. DiRienzo provides a service by which clinicians may contract with each other for medical services. There is no teaching or discussion of monitoring data itself to determine a revenue. Further, the notion that the DiRienzo teachings are relevant to Snell because the Snell system would benefit from "having an open electronic marketplace for medical service" is, at the least, inconsistent with the explicit teaching of Snell. Snell provides a system to program implanted medical devices that are already implanted within patients to provide critical and lifesaving technology. The notion that a patient would have their device data collected and placed on an open market for bidding by clinician to program their devices is akin to a heart attack victim price shopping for emergency room services while in an ambulance. Snell and DiRienzo are not combinable, but even if they are the result is not the claimed invention.

With respect to claims 8, 12-13, 18-21, 32, 33, 34 and 39 the Examiner relies only upon Snell for a rejection under 35 USC 103(a). Applicant respectfully traverses.

Claim 8 reads as follows:

An internet-based method for a paid service to maintain connection of a remote implantable medical device configured patient to a database network and for medical device data exchange and processing comprising the steps of:
providing a web-site in a web-enabled system, the web-site having a user interface which includes a sign-in input to enable access to a database network site associated with said web-enabled system;
receiving in a substantially continuous manner at the database network site first data inputs uniquely representative of sensed physiologic information from a specific implanted medical device configuration of a patient using said implantable medical device configuration;
receiving at the web-site second data inputs requesting access to representations of said first data inputs available at said database; and
enabling the originator of said second data inputs to have access to the database via the secure web site to view representations of said first data inputs.

According to the Examiner, Snell does not teach the following emphasized material:

An internet-based method for a paid service to maintain connection of a remote implantable medical device configured patient to a database network and for medical device data exchange and processing comprising the steps of:
providing a web-site in a web-enabled system, the web-site having a user interface which includes a sign-in input to enable access to a database network site associated with said web-enabled system;
receiving in a substantially continuous manner at the database network site first data inputs uniquely representative of sensed physiologic information from a specific implanted medical device configuration of a patient using said implantable medical device configuration;
receiving at the web-site second data inputs requesting access to representations of said first data inputs available at said database; and
enabling the originator of said second data inputs to have access to the database via the secure web site to view representations of said first data inputs.

Despite acknowledging that the vast majority of the claim is not taught by Snell, the Examiner asserts that it is obvious nonetheless, notably without providing teachings or support for any such assertion.

Applicant respectfully asserts that the rejection is unsupportable on its face. Any proper rejection under 35 USC 103 must provide references that teach the claimed elements along with a proper motivation to combine. Simply dismissing over half of the claim based on a conclusory statement does not provide a *prima facie* case of obviousness. Applicant respectfully requests withdrawal of the rejection. Applicant respectfully asserts that the pending application is in condition for allowance and requests notice of the same. Should any issues remain outstanding, the Examiner is urged to telephone the undersigned to expedite prosecution. The Commissioner is authorized to charge any deficiencies and credit any overpayments to Deposit Account No. 13-2546.

Respectfully submitted,

Date: May 15, 2007

/Daniel G. Chapik/
Daniel G. Chapik
Reg. 43,424
Telephone: (763) 514-3066
Customer No. 27581